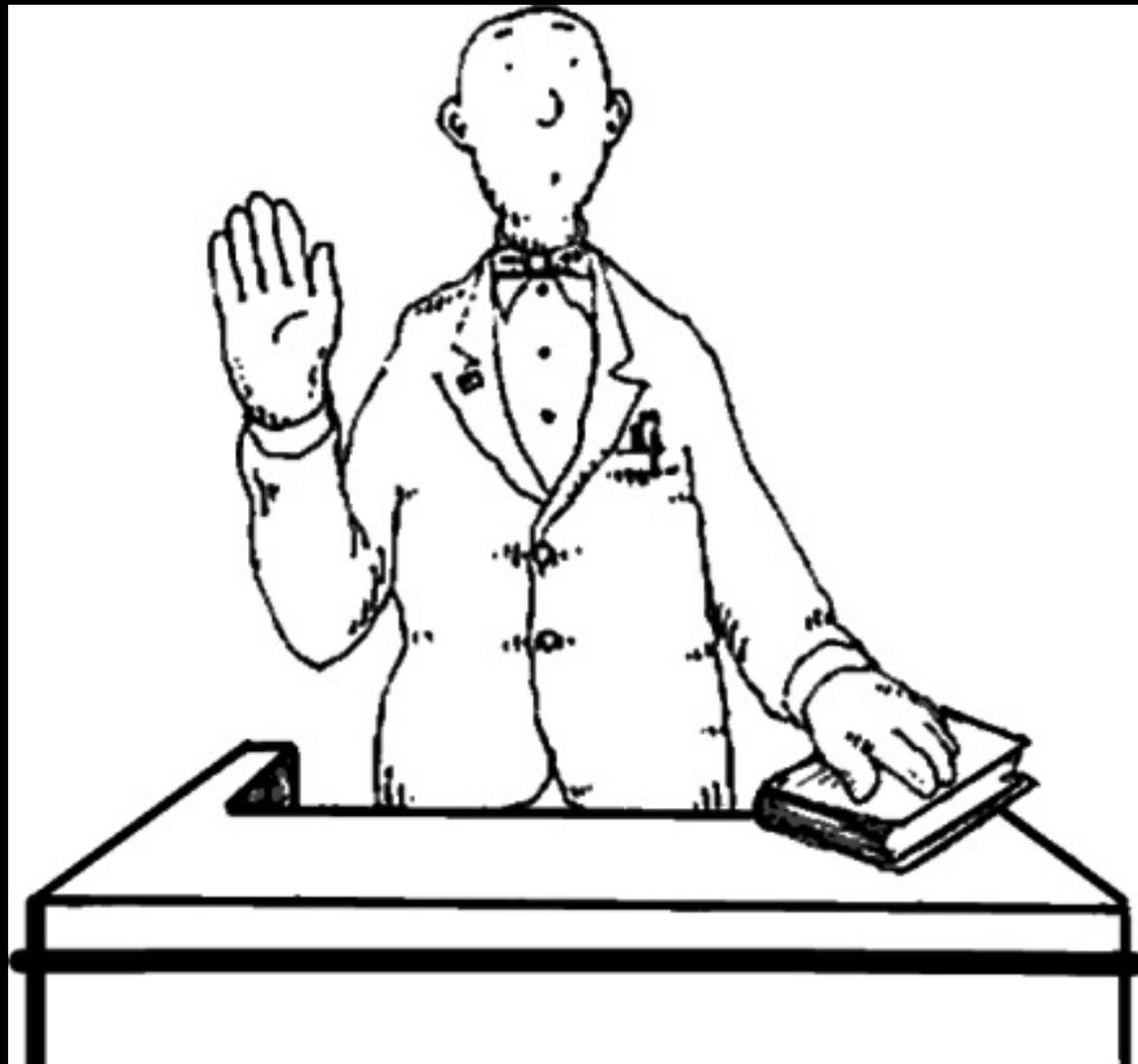




# #Goals

- Identify and prepare defense witnesses for testimony.
- Overview of the mechanics of introducing documents and exhibits
- Common objections



# Subpoenas

- [WI court form GF-126A](#)
- Used to command appearance and require the production of documents.
- Usually issued by clerk of court. 885.01
- Can be issued by Attorney (administrative hearings) 805.07
- May be served by any person by exhibiting and reading it to the witness, or by giving the witness a copy thereof, or by leaving such a copy at the witness's abode. 885.03, 801.11

STATE OF WISCONSIN, CIRCUIT COURT, ROCK

COUNTY

For Official Use

Case Caption:

State of Wisconsin

v

Subpoena and Certificate  
of Appearance

Case No.

The State of Wisconsin to (Witness Name and Address):

## Service Information

Date Served	Time Served	Fee Charged
		\$ ---
Manner of Service		Witness Fee
<input type="checkbox"/> Personal <input type="checkbox"/> Substitute		Enclosed
		\$ ---
Serving Agency		
Wisconsin State Public Defender		
Served By (Signature)		

You are required to appear and give evidence:

APPEARANCE INFORMATION		
Date	Time	Location (Include Room Number)
		Rock County Courthouse - Courtroom A 51 S. Main St. Janesville, WI 53545
Issuing Official		
Hon.		
On Behalf Of	Type of Proceeding	
Defendant	Motion Hearing	

 You are further required to bring with you the following:

 This is a third-party subpoena. Unless all parties agree otherwise, do not provide any requested items before the date and time of the above proceeding.

**Failure to appear may result in punishment for contempt, which may include monetary penalties, imprisonment and other sanctions.**

If you have any questions about this subpoena, please contact:		Issuing Official	
Name (Type or Print)		By	
Title		 Signature	
Telephone Number			
Address Wisconsin State Public Defender 101 E. MANDLER ST. 3RD. FLS JANESVILLE, WI 53545			
If you need help in this matter because of a disability, please call: (608) 743-2200			

For Court Use Only

Witness Information		Witness Certificate of Appearance	
Telephone Number	Date Witness Appeared	Message	
Address Correction	Signature of Witness		

Issuing Official \_\_\_\_\_

Title (Print or Type Name) \_\_\_\_\_

Date \_\_\_\_\_

STATE OF WISCONSIN, CIRCUIT COURT, \_\_\_\_\_ COUNTY

Case Caption:

**Subpoena**

Case No. \_\_\_\_\_

The State of Wisconsin to (Witness Name and Address):

Service Information		
Date Served	Time Served	Fee Charged
		\$
Manner of Service		Witness Fee Enclosed
<input type="checkbox"/> Personal		\$
<input type="checkbox"/> Substituted		
Serving Agency		
Served by (Signature)		

**You are required to appear and give evidence:**

APPEARANCE INFORMATION		
Date	Time	Location (Include Room Number)
Pending Official		
On behalf of		Type of Proceeding

You are further required to bring with you the following:

This is a third-party subpoena. Unless all parties agree otherwise, do not provide any requested items before the date and time of the above proceeding.

**Failure to appear may result in punishment for contempt, which may include monetary penalties, imprisonment and other sanctions.**

If you require reasonable accommodations due to a disability to participate in the court process, please call _____ prior to the scheduled court date. Please note that the court does not provide transportation.		
If you have any questions about this subpoena, please contact:		
Name (Type or Print)	Title	Telephone Number
Address		

(COURT SEAL)

State of Wisconsin  
In the matter of:



**SUBPOENA**

<u>Hearing Date:</u>	<u>Hearing Time:</u>	<u>Hearing Location:</u> Rock County Jail 200 Highway 14 East Janesville, Wisconsin
----------------------	----------------------	--

Pursuant to sec. 805.07, Wis. Stats., you are hereby required to appear in person before the Division of Hearings and Appeals on the day, time and place stated above to testify or give evidence as a witness.

Failure to appear may result in punishment for contempt which may include monetary penalties, imprisonment and other sanctions.

You are further required to bring with you the following papers or documents described below:

If you have questions about scheduling or other concerns about this appearance please contact:

NAME AND ADDRESS OF PERSON REQUESTING SUBPOENA TO BE ISSUED	TELEPHONE NUMBER
State Public Defender 101 E. Milwaukee St. Ste. 503 Janesville, WI 53545	608-758-6174

AFFIDAVIT FOR SERVICE OF SUBPOENA

I, \_\_\_\_\_ of the State of Wisconsin,  
do hereby certify that I duly and personally served the  
subpoena upon the named witness at the  
\_\_\_\_\_ of \_\_\_\_\_  
in the state of Wisconsin on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2019.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**STATE PUBLIC DEFENDER**  
101 East Milwaukee St. Suite 503  
Janesville, WI 53545

\_\_\_\_\_  
Assistant State Public Defender

# Witness Preparation

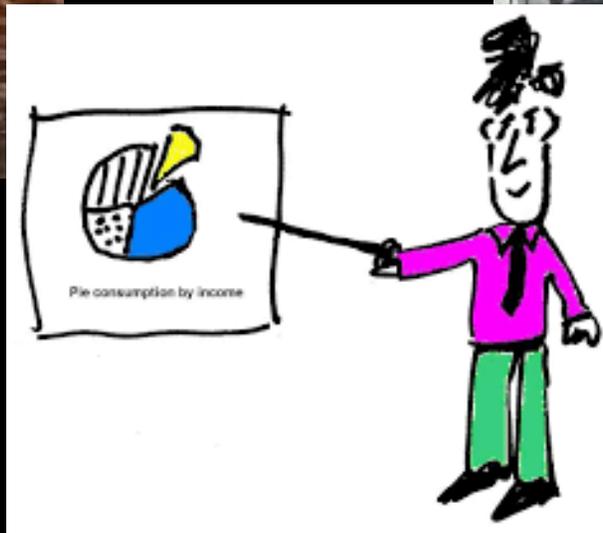
- People who can loosely relay a helpful version of events in an informal conversation will surprise you on the stand with the things they remember and say
- Explain difference between direct and cross and role of each attorney
- Practice
- Give them some outs- ask to repeat the questions
- Explain what to do if there is an objection
- Order of questions (e.g., chronological or thematic)

# Credibility

- Personal background/profession
- Factual advantage (e.g., the witness opportunity to observe the event)
- Demeanor on the stand
- Basis of knowledge
- Consistency of testimony
- Lack of bias
- Emotional state at the time or observation

# Direct

- Book: Theory of defense (*Self defense*)
- Chapter: Theory of witness (*Saw “victim” as aggressor*)
- Pages: Reasons why the witness supports the defense theory
  - One page per topic
  - Single goal for each page
  - (*Good opportunity to observe*)



# Techniques for Effective Direct

- Open ended questions-Who, what, where, when, and why
- No compound questions
- Don't assume any fact that is not in evidence
- *What happened on the corner of 6<sup>th</sup> street and main street?*

# Possible Documents and Exhibits?

- Police reports
- Official documents- hospital records, medical examiners report, school reports, use of force protocols for police
- Objects from scene
- Layout of crime scene
- Photos
- Tape recordings
- Police communication
- Court transcripts
- 911 recordings
- Policy statements
- Maps
- Weather reports
- CV's of experts
- Social media screen shots
- Text messages
- Cell phone/tower records

# Visit courtroom



# Evidentiary requirements for admissibility?

- Relevance
- Authenticity

# Relevant Evidence 904.01

- Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence

# Authentication and Identification

## 909.01

- The requirements of authentication or identification as a condition precedent to admissibility are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
- Self-authentication 909.02
  - Get certified!

# Basic foundation for admitting exhibits

- Have the exhibit marked
- Show the exhibit to the witness
- Elicit authenticating facts
- Have the witness identify the exhibit
- If condition is a factor- elicit testimony that there is no change between the event and evidentiary use or offer explanation of change
- If reproduction of a place, thing, or event elicit testimony that it fairly and accurately portrays that which it purports to portray
- Offer into evidence

# Examples

- Business Records
  - Do you know what this is?
  - How do you know?
  - How is \_\_\_\_\_ created, made, etc.
  - When is \_\_\_\_\_ created?
  - Is this done in the regular course of business?
- Photos
  - Is this what the (name object or person) looked like (at relevant time period)?
- Voice and Handwriting
  - Did you recognize the voice/handwriting?
  - When have you heard /seen voice/handwriting before?
  - How did you know it was \_\_\_\_\_'s voice?

# Prior inconsistent statement

- RAC or ARC method
  - You testified in court before on this matter
  - You took an oath
  - Raised your right hand
  - Swore to tell the truth
  - And you were truthful
  - The event had just happened
  - You knew it was important to be truthful
  - Today in court you said ABC...
  - But before when you say you told the truth....you said XYZ

# Refreshing the witness's recollection

- Witness does not remember a fact
  - Will something help you remember?
  - (Show witness statement/police report, etc.)
  - Is this a copy of your statement/police report, etc.
  - Please read it to yourself.
    - o Take statement/police report from witness
    - o Did the statement/report help you remember?
  - Ask the question



*In the future, please say "I object" rather than "that's total bullshit."*

# Objections

- Exclude evidence
- Prevent improper questions
- Preserve the record for appeal
- Argue point to advance defense theory
- Protect your witness
- Build credibility
- Fuck shit up
- Tip- if unsure just do it! (be careful of being annoying and making the jury think you are shady)

# Specific Objections

- Form of the question
  - *(what is being asked)*
- Objections to the substance of the evidence
  - *(what is being said, or what we think might be said)*

# Form of the question

- Argumentative 906.11
- Asked and answered 904.03
- Assumes facts not in evidence 902.01
- Compound question 906.11
- Insufficient foundation 909.01
- Leading 906.11
- Exceeds scope 906.11
- Misleading or improperly states previous evidence
- Vague 904.03
- Calls for narrative 904.02

# Substance of the evidence

- Calls for legal conclusion 907.04
- Calls for hearsay Ch. 908
- Improper opinion 907.01
- Irrelevant 904.01
- Answer is privileged Ch. 905
- Calls for speculation 906.02
- Prior bad acts/improper character 904.04, 906.08
- Non-responsive
- Lack of foundation 909.01

# Respond and get a ruling

- An objection is sufficient to preserve an issue for appeal, if it apprises the court of the specific grounds upon which it is based. A general objection that does not indicate the specific grounds for inadmissibility of evidence will not suffice to preserve the objector's right to appeal. *State v. Nelis*, 2007 WI 58. Other cases: *State v. Norwood*, 2005, WI App 218; *State v. Kutz*, 2003 WI App 205.